

NIH POLICY MANUAL
6015-2 PAST PERFORMANCE INFORMATION
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1. Explanation of Material Transmitted: This chapter is being revised to (a) change the applicability of this chapter to include acquisitions of commercial items above the simplified acquisition threshold that are conducted using simplified acquisition procedures; (b) streamline the process for review of past performance information; (c) remove coverage on Lowest Price Technically Acceptable Source Selections; (d) add a requirement for the contracting officer to seek the consent of the subcontractor prior to discussing subcontractor past performance information with the prime contractor; (e) revise appendices 3 and 4 to include elements to assess the contractor's performance in meeting small business and small disadvantaged business goals; and (f) to update references and make a number of editorial corrections.

2. Filing Instructions:

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- A. PURPOSE:** This chapter provides guidance on (1) the use of past performance information in the source evaluation and selection process, and (2) the preparation and management of interim and final evaluations of contractor performance.
- B. BACKGROUND:** The OFPP Policy Letter 92-5¹ established policies requiring Executive agencies to: (1) specify past performance as an evaluation factor in solicitations for all competitively negotiated contracts expected to exceed \$100,000, unless the contracting officer documents in the contract file the reasons why past performance should not be evaluated; (2) prepare evaluations of contractor performance on all contracts over \$100,000; and (3) to use past performance information in making responsibility determinations.

On March 31, 1995, Federal Acquisition Circular (FAC) 90-26 was issued to implement OFPP Policy Letter 92-5.

- C. POLICY:** The NIH believes that an offeror's past performance may be a likely indicator of future performance. For certain requirements, the use of past performance as an evaluation factor can be highly effective in reducing risks to the Government. In addition, conducting periodic performance assessments during the administration of a contract not only provides a way to track contractor performance, but also encourages excellence in performance. For these reasons contracting and program officials should:

1. consider past performance in the evaluation and award of contracts, when appropriate; and
2. evaluate contractor performance during performance and when the contract is completed, to ensure effective contract administration and to provide information required to support future award decisions.

This chapter does not apply to simplified acquisitions under \$100,000. Further, the requirement to consider past performance as a factor in the source evaluation process does not apply to noncompetitive actions.

D. REFERENCES:

¹ OFPP Policy Letter 92-5 was rescinded effective March 30, 2000.

1. FAR Subpart 9.1, Responsible Prospective Contractors
2. FAR 15.204-5, Part IV-Representations and Instructions
3. FAR 15.304, Evaluation Factors and Significant Subfactors
4. FAR 15.305, Proposal Evaluation
5. FAR 15.306, Exchanges with Offerors after Receipt of Proposals
6. FAR 15.505(f), Preaward Debriefing of Offerors
7. FAR 15.506(e), Postaward Debriefing of Offerors
8. FAR 42.15, Contractor Performance Information
9. HHSAR 342.7002(c)(2)(iv), Contract Monitoring Responsibilities
10. OFPP Best Practices for Collecting and Using Current and Past Performance Information, May 2000
11. HHS Past Performance Guidance, June 26, 1995
12. Contractor Performance System Guide - Standard & Construction with Contractor Module, May 2000
13. NIH Contractor Performance Insert Form - Standard Evaluation
14. NIH Contractor Performance Insert Form - Construction

E. DEFINITIONS:

1. **Past Performance Information** - FAR 42.1501 defines past performance information as "... relevant information for future source selection purposes, regarding a contractor's actions under previously awarded contracts. It includes, for example, the contractor's record of conforming to contract requirements and to standards of good workmanship; the contractor's record of forecasting and controlling costs; the contractor's adherence to contract schedules, including the administrative aspects of performance; the contractor's history of reasonable and cooperative behavior and commitment to customer

satisfaction; and generally, the contractor's business-like concern for the interest of the customer."

2. **NIH Contractor Performance System (CPS)** - The NIH CPS is an electronic information system that is used to collect and record past performance information for subsequent use in determining contractor eligibility and selection.

F. PROCEDURES: Solicitations for negotiated competitive acquisitions with an estimated value of \$100,000² or more shall include requirements for the evaluation of past performance information.

The contracting officer may determine that the use of past performance as an evaluation factor (or subfactor) is not essential to ensuring award to the offeror most capable of performing. In such cases, the contracting officer shall document the file accordingly. Some factors to consider in making such a determination include: the nature of the requirement; the performance risk associated with the requirement; and, the importance of past performance relative to other factors. In any event, the contracting officer is required to consider past performance in determining an offeror's responsibility in accordance with FAR 9.104-3(b). (See also F.3.c.)

The following represents the procedures to be used in the collection, evaluation, and maintenance of past performance information.

1. Obtaining Past Performance Information

- a. If it is determined that past performance should be included as an evaluation factor (or subfactor), the contracting officer must include specific instructions under Section L. of the solicitation advising offerors of the Government's intention to evaluate past performance information, and requesting that offerors provide a list of contracts performed that are similar in nature to the work described in the solicitation, with references for each contract identified. In addition, in accordance with FAR 15.305(a)(2)(ii), the instructions shall permit

²For solicitations that will result in the award of contracts involving options, only the estimated base amount need be considered in determining the total value of the acquisition.

offerors to submit information on problems encountered on the identified contracts and actions taken to correct those problems.

Information may be requested on relevant Federal, state and local Government, and non-Government contracts that have been completed or are in process. Where it is anticipated that the project may involve the use of major subcontracts, the contracting officer may require offerors to submit comparable information on proposed subcontractors. (See FAR 15.305(a)(2)(iii).)

Data on offerors' past performance need not be limited to that obtained from references provided by the offerors. Section L. also shall advise offerors that the Government may seek additional past performance information on offerors from other sources.

Appendix 1, Suggested Language for Section L., contains a sample provision for use in solicitations.

- b. Where past performance is used as an evaluation factor (or subfactor), the OFPP Best Practices for Collecting and Using Current and Past Performance Information recommends that it be considered as a "stand alone" factor in the solicitation, as opposed to integrating it with other factors. Making the factor distinct will reduce the chances of its impact being lost within other factors. Further, it may allow for a more efficient evaluation, particularly when the evaluation of past performance will be conducted apart from the technical evaluation.

Past performance subfactors should be developed jointly by the contracting officer and the project officer. The elements included in the definition in E.1., above, may be used as subfactors, or the contracting officer and the project officer may develop more specific subfactors tailored to the particular acquisition. In developing subfactors, keep in mind that much of the past performance information readily available has been developed using the rating guidelines in the National Institutes of Health Contractor Performance Report (See Appendix 4).

For each solicitation, the contracting officer and the project officer should use their discretion and judgment in determining the importance of past performance relative to other evaluation factors, and in selecting the appropriate evaluation scheme or methodology to be used.

Past performance shall be given sufficient consideration in the overall evaluation scheme to ensure that it is meaningfully considered and functions as a valid discriminator among the offers received. In addition, the contracting officer must ensure that the evaluation scheme accurately reflects the appropriate balance among all factors (technical, past performance, and cost or price).

The contracting officer may select from several evaluation methods, including numeric and adjectival rating methods. Examples of both are set forth in Appendix 2, Sample Provisions for Section M., and in the HHS Past Performance Guidance dated June 26, 1995.

The assignment of a specific weight or weights to the past performance factor or subfactors, although recommended by the OFPP Best Practices for Collecting and Using Current and Past Performance Information, is not required. In the event weights are not used, all subfactors must be listed in order of importance.

The past performance evaluation factor or significant subfactors and their relative importance; and, the general approach for evaluating past performance, shall be described under Section M. of the RFP. Section M. also shall indicate how offerors with no relevant performance history will be evaluated (see F.3.b. below). Finally, a statement shall be included to reflect the importance of past performance relative to other factors. (See FAR 15.304(e).)

Sample language for Section M. of the solicitation is contained in Appendix 2.

2. Verification of Past Performance Information

FAR 42.1503(b) states that "(t)he completed evaluation shall not be released to other than Government personnel

and the contractor whose performance is being evaluated during the period the information may be used to provide source selection information." In view of this restriction, non-Government reviewers may not participate in conducting reference checks, i.e., the verification process, nor may they evaluate information obtained through that process; only Government officials may perform these functions.

The NIH CPS should provide sufficient past performance information on offerors. Government officials are encouraged to contact the references identified in reports obtained from the NIH CPS whenever clarification, or more detailed information regarding the offeror's performance, is required.

If past performance information is not available from the NIH CPS, Government officials should conduct telephone interviews with references identified by the offeror (as well as those identified by the contracting officer or project officer). Alternatively, a request could be made for references to submit written evaluations. A sample questionnaire that may be used to record information from the telephone interview, or provided to references for completion, is included as Appendix 3, National Institutes of Health Customer Survey of Contractor Performance. The questionnaire may be modified by contract and program officials to suit particular needs; however, the questions should generally relate to the past performance subfactors included in Section M. of the solicitation.

The contracting officer, project officer or a panel consisting of Government officials, may conduct the reference checks.

Government officials need not contact all references provided by the offerors, but should select from the list provided, those contracts most relevant to the particular solicitation.

In cases where there is limited information on the performance of an offeror as a contractor, there may be relevant information on the performance of the offeror's key personnel on recent contracts, or perhaps, a history of the offeror's performance as a subcontractor or a consultant.

As indicated in F.1.a. above, past performance information may be obtained from sources other than those identified by the offerors. The contracting officer and project officer are encouraged to seek other sources for information on the performance records of offerors.

Completed questionnaires and other documentation obtained or developed during the verification process should be treated as confidential and marked "Source Selection Information."

3. Use of Past Performance Information

a. Evaluation Procedures

The FAR 15.306(c)(1) requires that the competitive range be based on "the ratings of each proposal against all evaluation criteria." The verification and evaluation of proposals must be conducted before establishing the competitive range. But, where the past performance factor is of minimal importance relative to other factors, verification and evaluation of past performance information need not be conducted on any offeror whose proposal would not be admitted to the competitive range (or, in the case of award without discussions, would not be selected for award) on the basis of the results of the evaluation of factors other than past performance.

The evaluation of information obtained through the verification process and any past performance information submitted by the offeror in its proposal may be conducted by the contracting officer and the project officer, or other Government officials.

Past performance information shall be evaluated in accordance with the evaluation scheme set forth in Section M. of the solicitation. In addition, as stated in FAR 15.305(a)(2)(i), when evaluating past performance information, the currency and relevance of the information, source of the information, context of the data, and general trends in the offeror's performance, should be taken into consideration.

b. Offerors With No Relevant Performance History

The Federal Acquisition Streamlining Act and FAR

15.305(a)(2)(iv) state that an offeror without a record of relevant past performance or for whom information on past performance is not available, shall not be evaluated favorably or unfavorably on past performance.

Where an adjectival rating method is used, such as that in the HHS Guidance on Past Performance, an offeror with no relevant performance history would be characterized as an "Unknown Performance Risk." Where a numeric rating method is used with a range of positive to negative factors (refer to Example

1 of Appendix 2 of this Policy Manual), "0" would be assigned, indicating that no performance history is identifiable.

If a more traditional numeric weighting method is used, as suggested in Example 3 of Appendix 2, a neutral rating would approximate one half of the total possible score for the past performance factor. While the OFPP considers this approach acceptable, the HHS Guidance on Past Performance maintains that it is not good "procurement practice" to give unearned points to any offeror. Contracting officers are not precluded from using this approach since no other logical method has been developed for assigning a neutral score where a traditional weighting method is used.

Where a tradeoff process is used, generally, an offeror with no performance history would be viewed more favorably than an offeror with a poor performance history, and less favorably than an offeror with an excellent performance record.

c. Responsibility Determination

Consideration of past performance as part of the responsibility determination is separate and distinct from the use of past performance as a specific evaluation factor.

"Responsibility" is a broad concept that addresses whether a potential contractor has the capability to perform a particular contract based on an analysis of many areas including financial resources, quality assurance, and past performance. Responsibility

determinations provide a "pass/fail," or "go/no-go" answer to the question of whether an offeror can perform the work. Past performance must be considered as a part of the assessment of an offeror's responsibility in connection with each acquisition.

d. Evaluation Documentation

The OFPP has advised that past performance information provided in accordance with FAR Subpart 42.15 may be withheld from disclosure under the Freedom of Information Act. To ensure that this information remains protected, decisional documents may include general information summarizing the results of the past performance evaluation, but should not specifically incorporate by reference past performance evaluations obtained through references.

4. Exchanges with Offerors and Source Selection

If award will be made without conducting discussions, the contracting officer may give potential awardee(s) an opportunity to clarify the relevance of past performance information, and address adverse past performance information to which offerors have not previously had an opportunity to respond.

If discussions are to be conducted, prior to establishing the competitive range, the contracting officer must hold communications with offerors whose past performance information is the determining factor preventing them from being placed within the competitive range. Such communications shall address adverse past performance information to which an offeror has not had a prior opportunity to respond.

When the competitive range has been determined and discussions are conducted, the contracting officer should discuss with each offeror any significant weaknesses or deficiencies concerning their past performance information, if not addressed earlier during the communications stage. During the process of discussions, contracting officers are not required to reach agreement with offerors regarding particular areas of concern. The objective is to communicate negative findings, and to permit offerors an opportunity to present any additional information, which may have a bearing on perceived

inadequate or unsatisfactory past performance.

If the information obtained during the verification process includes negative past performance information about an offeror's performance as a subcontractor or a consultant, it is assumed that the offeror would not have had an earlier opportunity to comment on that information. Therefore, the offeror should be provided that opportunity during clarifications, communications prior to establishment of the competitive range, or exchanges after establishment of the competitive range, as appropriate.

If the contracting officer finds it necessary to discuss aspects of a proposed subcontractor's past performance, the consent of the subcontractor must be obtained prior to disclosing to the prime any performance information regarding the subcontractor.

The contracting officer shall not disclose to an offeror the names of individuals who provided information concerning the offeror's past performance.

Award will be made to the firm offering the best value to the Government, based on the relative importance of past performance to technical factors and cost/price, as stated in the solicitation.

5. Evaluation of Contractor Performance

a. Interim and Final Evaluations

Evaluations of contractor performance shall be prepared on all contracts of \$100,000 or more, except for construction contracts and architect-engineer contracts. Evaluations of contractor performance shall be conducted on all construction contracts of \$500,000 or more and on all architect-engineer contracts of \$25,000 or more.

A final performance evaluation is required to be completed on each contract at the time of completion of work. The final evaluation of a contractor's performance will satisfy the reporting requirement stipulated in HHSAR 342.7002(c)(2)(iv).

In addition to the final evaluation, at least one interim evaluation is to be prepared on all contracts with a period of performance exceeding one year. The project officer and the contracting officer shall determine the

frequency of preparing interim evaluations on a particular contract. Project officers and contracting officers may conduct these evaluations, for example, at the completion of a particular phase of the contract, once during each 12-month period to coincide with annual funding or the exercise of an option, or more or less frequently, when a particular event or circumstance dictates changes to the record. In any event, the evaluations shall be conducted at sufficient intervals to be useful to source selection officials seeking current performance information about a contractor.

Final and interim reports should be prepared using the NIH Contractor Performance Insert Form - Standard Evaluation, <http://ocm.od.nih.gov/contracts/cpsstandard1.html> or the NIH Contractor Performance Insert Form - Construction, <http://ocm.od.nih.gov/contracts/cpsconstruction1.html> as appropriate. These forms have been designed for use with the NIH CPS. Instructions for completing the forms are provided in the CPS Guide - Standard & Construction with Contractor Module, dated May 2000. Alternatively, Appendix 4, the National Institutes of Health Contractor Performance Report form, may be used.

b. The Rebuttal Process

The interim and final evaluations should be initiated by the project officer and submitted to the contracting officer. The contracting officer will review the evaluation report, indicate his/her concurrence, and will submit the document to the contractor as soon as practicable. The contractor will be permitted thirty days to review the document and to submit additional information or a rebutting statement. The contracting officer is not required to provide consultants and subcontractors an opportunity to rebut negative past performance information that may be included in the evaluation report.

The project officer and the contracting officer shall review any information submitted by the contractor, attempt to resolve any areas of disagreement with the contractor, and make any necessary changes to the evaluation report. If agreement cannot be reached with the contractor, the matter shall be referred to an individual one level above the contracting officer, whose

decision will be final. The decision should be issued to the contracting officer as promptly as possible, and must be made in writing.

If changes are made to the evaluation report after review of the contractor's rebuttal, a copy of the document, as revised, shall be promptly furnished to the contractor.

6. Maintenance of Past Performance Information

Interim and final evaluations (including any rebutting statements submitted by the contractor and the written agency decision) are to be shared with other departments and agencies, when requested, to provide information to support future award decisions. Since these evaluations contain information that may be sensitive, they should be marked "Source Selection Information," and should not be released to other than Government personnel and the contractor whose performance is being evaluated.

The completed evaluations should be entered into the NIH CPS. In addition, a copy of the evaluation shall be retained in the official contract file, along with any rebutting statements submitted by the contractor and any written agency decision. Appropriate controls must be in place to ensure that only authorized personnel have access to this information.

The past performance evaluations shall be purged from the NIH CPS three years after contract expiration. Past performance information may be permanently maintained in the official contract file; however, three years after contract expiration, that information can no longer be used for source selection purposes.

The NIH CPS is considered an extension of Privacy Act Systems Notice 09-25-0036, "Extramural Awards and Chartered Advisory Committees: IMPAC (Grant/Contract/Cooperative Agreement Information/Chartered Advisory Committee Information), HHS/NIH/OER and HHS/NIH/CMO."

G. RECORDS RETENTION AND DISPOSAL:

All records (e-mail and non-e-mail) pertaining to this chapter must be retained and disposed of under the authority of NIH Manual 1743, "Keeping and Destroying Records, Appendix 1, NIH

Records Control Schedule, Item 2600-A-4, Routine Procurement Files.

NIH e-mail messages. NIH e-mail messages (messages, including attachments, that are created on NIH computer systems or transmitted over NIH networks) that are evidence of the activities of the agency or have informational value are considered Federal records. *These records must be maintained in accordance with current NIH Records Management guidelines. If necessary, back-up file capability should be created for this purpose. Contact your IC Records Officer for additional information.*

All e-mail messages are considered Government property, and if requested for a legitimate Government purpose, must be provided to the requester. Employees' supervisors, NIH staff conducting official reviews or investigations, and the Office of the Inspector General may request access to or copies of the e-mail messages. E-mail messages must also be provided to Congressional Oversight Committees if requested and are subject to the Freedom of Information Act requests. Since most e-mail systems have back-up files that are retained for significant periods of time, e-mail messages and attachments are likely to be retrievable from a back-up file after they have been deleted from an individual's computer. The back-up files are subject to the same requests as the original messages.

H. MANAGEMENT CONTROLS

The purpose of this manual issuance is to provide guidance to contracting officers and program officials on (1) the use of past performance information in the source evaluation and selection process, and (2) the preparation and management of interim and final evaluations.

1. **Office Responsible for Reviewing Management Controls Relative to this Chapter:** The Division of Acquisition Policy and Evaluation (DAPE), Office of Acquisition Management and Policy, (OAMP), is accountable for the method used to ensure that management controls are implemented and working.
2. **Frequency of Reviews:** Ongoing
3. **Method of Review:** DAPE/OAMP will maintain appropriate oversight through reviews of IC presolicitation and

preaward contract files conducted by the NIH Board of Contract Awards. The NIH Board of Contract Awards reviews a percentage of contract actions from each IC. Issues identified by the Board are provided to the IC for corrective action. When repetitive issues are identified, these are brought to the attention of the Acquisition Management Committee, which is responsible for addressing and resolving common acquisition issues. In addition, the Head of the Contracting Activity (HCA) is routinely apprised of any difficulties in IC implementation of policy. Depending on the nature and extent of the problem, the HCA may recommend additional policy guidance or training of contract staff.

4. **Review Reports:** The HCA is routinely notified of problems and takes necessary action to resolve them.

Past Performance Information³

- A. Offerors shall submit the following information as part of their [business/technical] proposal.

A list of the last _____ contracts completed during the past [one/two/three] years and a list of [all contracts/the last _____ contracts awarded] currently in process that are similar in nature to the solicitation workscope.⁴ Contracts listed may include those entered into by the Federal Government, agencies of state and local governments, non-profit entities, and commercial concerns. Offerors that are newly formed entities without prior contracts should list contracts and subcontracts as required above for all key personnel.

Include the following information for each contract or subcontract:

1. Name of Contracting Organization
2. Contract Number (for subcontracts, provide the prime contract number and the subcontract number)
3. Contract Type
4. Total Contract Value
5. Description of Requirement
6. Contracting Officer's Name and Telephone Number
7. Program Manager's Name and Telephone Number
8. Standard Industrial Code

The offeror shall submit comparable information on any subcontractor that the offeror proposes to perform a major subcontract under this effort. For the purpose of this solicitation, a "major subcontract" is defined as⁵_____

³ This form includes suggested language to be used that meets the minimum FAR requirements to solicit from offerors a list of contracts performed that are similar in nature to the work described in the solicitation, and to permit offerors an opportunity to provide information on problems encountered and corrective actions taken on the identified contracts.

⁴ The contracting officer may limit the request to information pertaining to contracts within a particular school or department of a university, or a particular unit of a company.

The contracting officer also may request information on related ongoing and completed grants.

⁵ The contracting officer will define "major subcontract" for individual acquisitions. A major subcontract could be defined, for example, as a subcontract that exceeds a certain dollar threshold.

The offeror may provide information on problems encountered on the identified contracts and the offeror's corrective actions.

- B. Each offeror will be evaluated on its performance under existing and prior contracts for similar products or services.

The Government is not required to contact all references provided by the offeror. Also, references other than those identified by the offeror may be contacted by the Government to obtain additional information that will be used in the evaluation of the offeror's past performance.

Section M - Evaluation Factors for Award

[THE FOLLOWING LANGUAGE MAY BE USED WHEN (A) THE TRADEOFF PROCESS IS USED, AND (B) PAST PERFORMANCE IS TREATED AS A "STAND ALONE" FACTOR, i.e., IT IS SEPARATE AND DISTINCT FROM THE TECHNICAL FACTOR. IN THIS EXAMPLE, THE FACTORS IN ORDER OF IMPORTANCE ARE: TECHNICAL, COST/PRICE AND PAST PERFORMANCE. IF THIS IS NOT CONSISTENT WITH YOUR REQUIREMENT, CHANGE THE NARRATIVE TO APPROPRIATELY REFLECT THE RELATIONSHIP OF PAST PERFORMANCE TO TECHNICAL AND COST/PRICE FACTORS.]

M.1. General

Selection of an offeror for contract award will be based on an evaluation of proposals against three factors. The factors in order of importance are: technical, cost/price, and past performance. All evaluation factors other than cost or price, when combined, are [significantly more important than cost or price/approximately equal to cost or price/significantly less important than cost or price]. Offerors are advised that award will be made to that offeror whose proposal provides the best overall value to the Government.

The evaluation will be based on the demonstrated capabilities of the prospective contractors in relation to the needs of the project as set forth in the RFP. The merits of each proposal will be evaluated carefully. Each proposal must document the feasibility of successful implementation of the requirements of the RFP. Offerors must submit information sufficient to evaluate their proposals based on the detailed criteria listed below.

M.2. Technical Factor ****

M.3. Cost/Price Factor ****

M.4. Past Performance Factor [SELECT EXAMPLE 1 (page 3), EXAMPLE 2 (page 6), OR EXAMPLE 3 (page 9) OF THIS APPENDIX]

[OR]

[THE FOLLOWING LANGUAGE MAY BE USED WHEN (A) THE TRADEOFF PROCESS IS USED, AND (B) PAST PERFORMANCE IS INTEGRATED OR COMBINED WITH THE TECHNICAL FACTOR. IN THIS EXAMPLE, THE TECHNICAL FACTOR (INCLUDING PAST PERFORMANCE) IS MORE IMPORTANT THAN COST/PRICE. IF THIS IS NOT CONSISTENT WITH YOUR REQUIREMENT, CHANGE THE NARRATIVE TO APPROPRIATELY REFLECT THE RELATIONSHIP OF COST/PRICE TO THE TECHNICAL FACTOR.]

M.1 General

The major evaluation factors for this solicitation, listed in order of importance, include technical (which encompasses experience and past performance) and cost/price factors. All evaluation factors other than cost or price, when combined, are [significantly more important than cost or price/approximately equal to cost or price/significantly less important than cost

or price].

The evaluation will be based on the demonstrated capabilities of the prospective contractors in relation to the needs of the project as set forth in the RFP. The merits of each proposal will be evaluated carefully. Each proposal must document the feasibility of successful implementation of the requirements of the RFP. Offerors must submit information sufficient to evaluate their proposals based on the detailed criteria listed below.

M.2. Technical Factor

M.3. Cost/Price Factor

M.4.- Past Performance Factor - Example 1

[THE FOLLOWING EXAMPLE MAY BE USED WHEN (A) THE TRADEOFF PROCESS IS USED; (B) PAST PERFORMANCE IS TREATED AS A "STAND ALONE" FACTOR; AND (C) THE EVALUATION OF PAST PERFORMANCE WILL BE CONDUCTED SEPARATELY FROM THE INITIAL TECHNICAL EVALUATION. IN THIS EXAMPLE A POSITIVE-NEGATIVE NUMERICAL RATING SCHEME IS USED.]

[One of the following two paragraphs may be used to streamline the process for review, provided, past performance is of minimal importance relative to other evaluation factors.]

[If award with discussions is contemplated, use this paragraph.]

The past performance factor is of minimal importance relative to other evaluation factors identified in this solicitation. An evaluation of offerors' past performance information will be conducted prior to any communications with offerors leading to establishment of the competitive range. However, this evaluation will not be conducted on any offeror whose proposal would not be admitted to the competitive range on the basis of the results of the evaluation of factors other than past performance.

[OR]

[If award without discussions is contemplated, use this paragraph.]

The past performance factor is of minimal importance relative to the other evaluation factors identified in this solicitation. An evaluation of offerors' past performance information will be conducted subsequent to the technical evaluation. However, this evaluation will not be conducted on any offeror whose proposal would not be selected for award based on the results of the evaluation of factors other than past performance.

[Use the following paragraphs under this Example 1 with either of the paragraphs selected from above.]

The evaluation will be based on information obtained from references provided by the offeror, other relevant past performance information obtained from other sources known to the Government, and any information supplied by the offeror concerning problems encountered on the identified contracts and corrective actions taken.

The Government will assess the relative risks associated with each offeror. Performance risks are those associated with an offeror's likelihood of success in performing the acquisition requirements as indicated by that offeror's record of past performance.

The assessment of performance risk is not intended to be the product of a mechanical or mathematical analysis of an offeror's performance on a list of contracts but rather the product of subjective judgment by the Government after it considers relevant information. When assessing performance

risks, the Government will focus on the past performance of the offeror as it relates to all acquisition requirements, such as the offeror's record of performing according to specifications, including standards of good workmanship; the offeror's record of controlling and forecasting costs; the offeror's adherence to contract schedules, including the administrative aspects of performance; the offeror's reputation for reasonable and cooperative behavior and commitment to customer satisfaction; and generally, the offeror's business-like concern for the interest of the customer.

The Government will consider the currency and relevance of the information, source of the information, context of the data, and general trends in contractor's performance.

The lack of a relevant performance record may result in an unknown performance risk assessment, which will neither be used to the advantage nor disadvantage of the offeror.

The following rating method shall be used in the evaluation of past performance information:

- +2 Excellent - Based on the offeror's performance record, no doubt exists that the offeror will successfully perform the required effort. Sources of information are consistently firm in stating that the offeror's performance was superior and that they would unhesitatingly do business with the offeror again.
- +1 Good - Based on the offeror's performance record, little doubt exists that the offeror will successfully perform the required effort. Sources of information state that the offeror's performance was good, better than average, etc., and that they would do business with the offeror again.
- 0 None - No past performance history identifiable.
- 1 Marginal - Based on the offeror's performance record, some doubt exists that the offeror will successfully perform the required effort. Sources of information make unfavorable reports about the offeror's performance and express concern about doing business with the offeror again.
- 2 Poor - Based on the offeror's performance record, serious doubt exists that the offeror will successfully perform the required effort. Sources of information consistently stated that the offeror's performance was entirely unsatisfactory and that they would not do business with the offeror again.

M.4.- Past Performance Factor - Example 2

[THE FOLLOWING EXAMPLE MAY BE USED WHEN (A) THE TRADEOFF PROCESS IS USED; (B) PAST PERFORMANCE IS TREATED AS A "STAND

ALONE" FACTOR; AND (C) THE EVALUATION OF PAST PERFORMANCE WILL BE CONDUCTED SEPARATELY FROM THE INITIAL TECHNICAL EVALUATION. IN THIS EXAMPLE, THE GENERAL APPROACH FOR EVALUATING PAST PERFORMANCE IS DESCRIBED; HOWEVER, THE RATING METHOD IS NOT DISCLOSED.]

[One of the following two paragraphs may be used to streamline the process for review, provided, past performance is of minimal importance relative to other evaluation factors.]

[If award with discussions is contemplated, use this paragraph.]

The past performance factor is of minimal importance relative to other evaluation factors identified in this solicitation. An evaluation of offerors' past performance information will be conducted prior to any communications with offerors leading to establishment of the competitive range. However, this evaluation will not be conducted on any offeror whose proposal would not be admitted to the competitive range on the basis of the results of the evaluation of factors other than past performance.

[OR]

[If award without discussions is contemplated, use this paragraph.]

The past performance factor is of minimal importance relative to other evaluation factors identified in this solicitation. An evaluation of offerors' past performance information will be conducted subsequent to the technical evaluation. However, this evaluation will not be conducted on any offeror whose proposal would not be selected for award based on the results of the evaluation of factors other than past performance.

[Use the following paragraphs under this Example 2 with either of the paragraphs selected from above.]

The evaluation will be based on information obtained from references provided by the offeror, other relevant past performance information obtained from other sources known to the Government, and any information supplied by the offeror concerning problems encountered on the identified contracts and corrective actions taken.

The Government will assess the relative risks associated with each offeror. Performance risks are those associated with an offeror's likelihood of success in performing the acquisition requirements as indicated by that offeror's record of past performance.

The assessment of performance risk is not intended to be a product of a mechanical or mathematical analysis of an offeror's performance on a list of contracts but rather the product of subjective judgement by the Government after it considers relevant information.

When assessing performance risks, the Government will focus on the past performance of the offeror as it relates to all acquisition requirements, such as, the offeror's record of performing according to specifications, including standards of

good workmanship; the offeror's record of controlling and forecasting costs; the offeror's adherence to contract schedules, including the administrative aspects of performance; the offeror's reputation for reasonable and cooperative behavior and commitment to customer satisfaction; and generally, the offeror's business-like concern for the interest of the customer.

The Government will consider the currency and relevance of the information, source of the information, context of the data, and general trends in the offeror's performance.

The lack of a relevant performance record may result in an unknown performance risk assessment, which will neither be used to the advantage nor disadvantage of the offeror.

M.4.- Past Performance Factor - Example 3

[THE FOLLOWING EXAMPLE MAY BE USED WHEN (A) THE TRADEOFF PROCESS IS USED; (B) PAST PERFORMANCE IS TREATED AS A "STAND ALONE" FACTOR; AND (C) THE EVALUATION OF PAST PERFORMANCE WILL BE CONDUCTED AT THE TIME OF THE INITIAL TECHNICAL EVALUATION. IN THIS EXAMPLE, PAST PERFORMANCE SUBFACTORS ARE USED. USE OF THIS EXAMPLE WOULD REQUIRE THAT REFERENCE CHECKS BE COMPLETED PRIOR TO THE TECHNICAL EVALUATION.]

The Government will evaluate the offeror's past performance based on information obtained from references provided by the offeror, other relevant past performance information obtained from other sources known to the Government, and any information supplied by the offeror concerning problems encountered on the identified contracts and corrective actions taken.

The Government will assess the relative risks associated with each offeror. Performance risks are those associated with an offeror's likelihood of success in performing the acquisition requirements as indicated by that offeror's record of past performance.

The Government will consider the currency and relevance of the information, source of the information, context of the data, and general trends in the offeror's performance.

The lack of a relevant performance record may result in an unknown performance risk assessment, which will neither be used to the advantage nor disadvantage of the offeror.

[THE "GENERIC" PAST PERFORMANCE SUBFACTORS LISTED BELOW MAY BE USED OR PAST PERFORMANCE SUBFACTORS MAY BE TAILORED TO THE SPECIFIC REQUIREMENT. ALSO, A SPECIFIC WEIGHT MAY BE ASSIGNED OR THE SUBFACTORS MAY SIMPLY BE LISTED IN ORDER OF RELATIVE IMPORTANCE.]

Listed below are past performance subfactors and the weights to be used for evaluation purposes.

Past Performance Subfactors

Weight

Record of conforming to specifications
and to standards of good workmanship

Record of forecasting and controlling costs
under cost-reimbursement contracts

Adherence to contract schedules, including
the administrative aspects of performance

Reputation for reasonable and cooperative
behavior and commitment to customer satisfaction

Business-like concern for the interest of the
customer

[OR]

The past performance subfactors are listed below in order of
relative importance. These subfactors will be used to evaluate
the quality of past performance.

Past Performance Subfactors

Please complete the following questionnaire and return via regular mail or fax
to the attention of:

_____ by (Date) _____
(Name)

(Address)

(Fax Number)

This survey pertains to: _____

Department/Component: _____

Contract Number: _____ Date of Survey: _____

Name of Person Completing Survey: _____

Signature of Person Completing Survey: _____

Your Company/Agency: _____

Your Role in this Contract (circle one): Contracting Officer
Contract Specialist Project Officer Other _____

Contract Value (including options): \$ _____

Performance Period: _____
(including option periods)

Type of Contract: _____

Approximate percentage of work being performed (or completed) by subcontractor(s): _____%

Information on subcontractor(s) (where more than _____% of work was completed by the subcontractor):

Subcontractor _____ Program Manager _____ Phone _____

Subcontractor _____ Program Manager _____ Phone _____

Subcontractor _____ Program Manager _____ Phone _____

General description of products/services required under the contract:

RATINGS

Please answer each of the following questions with a rating that is based on objective measurable performance indicators to the maximum extent possible. Commentary to support rating shall be noted on page 4.

Assign each area a rating of 0 (Unsatisfactory), 1 (Poor), 2 (Fair), 3 (Good), 4 (Excellent), or 5 (Outstanding). Use the attached Rating Guidelines as guidance in making these evaluations. Circle the appropriate rating. If you do not have enough personal knowledge or feedback from internal customers who directly received products and services from the contractor to make a determination on any of the performance criteria below, please circle "N/A" (not applicable/no opinion).

QUALITY OF SERVICE

- | | | | | | | | |
|----|---------------------------------------|---|---|---|---|---|-----|
| 1. | Compliance with contract requirements | | | | | | |
| | 0 | 1 | 2 | 3 | 4 | 5 | N/A |
| 2. | Accuracy of reports | | | | | | |
| | 0 | 1 | 2 | 3 | 4 | 5 | N/A |
| 3. | Effectiveness of personnel | | | | | | |
| | 0 | 1 | 2 | 3 | 4 | 5 | N/A |
| 4. | Technical Excellence | | | | | | |
| | 0 | 1 | 2 | 3 | 4 | 5 | N/A |

COST CONTROL (Not applicable to Fixed Price Type Contracts)

- | | | | | | | | |
|----|--|---|---|---|---|---|-----|
| 1. | Record of forecasting and controlling target costs | | | | | | |
| | 0 | 1 | 2 | 3 | 4 | 5 | N/A |
| 2. | Current, accurate and complete billings | | | | | | |
| | 0 | 1 | 2 | 3 | 4 | 5 | N/A |

- | | | | | | | | | |
|----|---|---|---|---|---|---|---|-----|
| 3. | Relationship of negotiated costs to actuals | 0 | 1 | 2 | 3 | 4 | 5 | N/A |
| 4. | Cost efficiencies | 0 | 1 | 2 | 3 | 4 | 5 | N/A |

TIMELINESS OF PERFORMANCE

- | | | | | | | | | |
|----|---|------------------------------|---|---|---|---|---|-----|
| 1. | Met interim milestones | 0 | 1 | 2 | 3 | 4 | 5 | N/A |
| 2. | Reliability | 0 | 1 | 2 | 3 | 4 | 5 | N/A |
| 3. | Responsive to technical direction | 0 | 1 | 2 | 3 | 4 | 5 | N/A |
| 4. | Completed on time including wrap-up and contract administration | 0 | 1 | 2 | 3 | 4 | 5 | N/A |
| 5. | Met delivery schedules | 0 | 1 | 2 | 3 | 4 | 5 | N/A |
| 6. | Liquidated damages assessed: | Yes No (<i>circle one</i>) | | | | | | |

BUSINESS RELATIONS

- | | | | | | | | | |
|----|--|---|---|---|---|---|---|-----|
| 1. | Effective management, including management of subcontracts | 0 | 1 | 2 | 3 | 4 | 5 | N/A |
| 2. | Reasonable/cooperative behavior | 0 | 1 | 2 | 3 | 4 | 5 | N/A |
| 3. | Responsive to contract requirements | 0 | 1 | 2 | 3 | 4 | 5 | N/A |
| 4. | Notification of problems | 0 | 1 | 2 | 3 | 4 | 5 | N/A |
| 5. | Flexibility | 0 | 1 | 2 | 3 | 4 | 5 | N/A |
| 6. | Pro-active vs reactive | 0 | 1 | 2 | 3 | 4 | 5 | N/A |

SMALL BUSINESS AND SMALL DISADVANTAGED BUSINESS GOALS

1. The contractor met the goals set forth in its Subcontracting Plan.
(See FAR 19.7 and 15.305(a)(2)(v))
Yes No N/A (*circle one*)
- Comments: (optional) _____

2. The contractor met Small Disadvantaged Business Participation goals.
(See FAR 15.305(a)(2)(v) and FAR 19.1202)
Yes No N/A (*circle one*)
- Comments: (optional) _____

CUSTOMER SATISFACTION

1. The contractor is committed to customer satisfaction.
Yes No (circle one)
2. Would you recommend selection of this firm again?
Yes No (circle one)

ADDITIONAL COMMENTS

Rating Guidelines

	QUALITY OF PRODUCT OR SERVICE	COST CONTROL	TIMELINESS OF PERFORMANCE	BUSINESS RELATIONS
0-Unsatisfactory	Contractor is not in compliance and is jeopardizing achievement of contract objectives	Contractor is unable to manage costs effectively	Contractor delays are jeopardizing performance of contract objectives	Response to inquiries, technical/ service/ administrative issues is not effective
1-Poor	Major problems have been encountered	Contractor is having major difficulty managing costs effectively	Contractor is having major difficulty meeting milestones and delivery schedule	Response to inquiries, technical/ service/ administrative issues is marginally effective
2-Fair	Some problems have been encountered	Contractor is having some problems managing costs effectively	Contractor is having some problems meeting milestones and delivery schedule	Response to inquiries, technical/ service/ administrative issues is somewhat effective
3-Good	Minor inefficiencies/ errors have been identified	Contractor is usually effective in managing costs	Contractor is usually effective in meeting milestones and delivery schedule	Response to inquiries, technical/ service/ administrative issues is usually effective
4-Excellent	Contractor is in compliance with contract requirements and/or delivers quality products/services	Contractor is effective in managing costs and submits current, accurate, and complete billings	Contractor is effective in meeting milestones and delivery schedule	Response to inquiries, technical/ service/ administrative issues is effective
5-Outstanding: The contractor has demonstrated an outstanding performance level in any of the above four categories that justifies adding a point to the score. It is expected that this rating will be used in those rare circumstances when contractor performance clearly exceeds the performance levels described as "Excellent."				

1. FINAL REPORT _____ INTERIM REPORT _____ (Check one)

2. REPORTING PERIOD: (From) _____ (To) _____

3. CONTRACTING OFFICER:
(Institute or Office; Location):

4. CONTRACT NUMBER:

5. CONTRACTOR NAME:
DEPARTMENT/COMPONENT:
ADDRESS:
CITY: STATE: ZIP CODE:

6. CONTRACT AWARD DATE:
CONTRACT EXPIRATION DATE:

7. CONTRACT VALUE: \$

8. DESCRIPTION OF REQUIREMENT (Title):

9. RATINGS

Circle the number that corresponds to the rating for each category (see attached Rating Guidelines), and provide comments to support the rating.

QUALITY OF PRODUCT OR SERVICE Rating 0 1 2 3 4 5
Comments:

COST CONTROL⁶ Rating 0 1 2 3 4 5
Comments:

TIMELINESS OF PERFORMANCE Rating 0 1 2 3 4 5
Comments:

BUSINESS RELATIONS Rating 0 1 2 3 4 5
Comments:

10. SUBCONTRACTS

Are subcontracts involved? Yes No (Circle one)

Comments: [Briefly summarize the quality of performance of major subcontractors. This information serves two purposes: (1) it provides some insight into the contractor's effectiveness in managing its subcontractors; and (2) it provides information that may be useful for future procurements when evaluating the past performance of offerors that have

⁶ Not applicable to fixed-price type contracts.

only performed as subcontractors.]

11. KEY PERSONNEL

PROJECT MANAGER/PRINCIPAL INVESTIGATOR (*name*):
Comments:

KEY PERSON (*name*):
Comments:

KEY PERSON (*name*):
Comments:

KEY PERSON (*name*):
Comments:

SMALL BUSINESS SUBCONTRACTING PLAN

12.
Did the contractor meet the goals set forth in its Subcontracting Plan?
(See FAR 15.305(a)(2)(v) and FAR 19.7)

Yes No N/A (*Circle one*)

Comments: (optional) _____

SMALL DISADVANTAGED BUSINESS GOALS

13.
Did the contractor meet its small disadvantaged business participation goals?
(See FAR 15.305(a)(2)(v) and FAR 19.1202)

Yes No N/A (*Circle one*)

Comments: (optional) _____

CUSTOMER SATISFACTION

14.

Is/was the contractor committed to customer satisfaction?

Yes No (Circle one)

Would you recommend selection of this firm again?

Yes No (Circle one)

15. NIH PROJECT OFFICER (name):

SIGNATURE: _____ Date _____

Phone: _____ FAX: _____

Internet Address: _____

16. CONTRACTING OFFICER CONCURRENCE: (Initial) _____

Date: _____

17. CONTRACTOR'S REVIEW:

Were comments or additional information provided?

Yes No (Circle one)

If yes, they are:

On file in:

_____ (Location) _____ (Phone)

Attached: _____ (Check if attached)

CONTRACTOR'S

REPRESENTATIVE: (name)

SIGNATURE: _____ Date _____

Phone: _____ FAX: _____

Internet Address: _____

18. AGENCY REVIEW:

Were contractor comments reviewed at a level above the contracting officer? Yes

No (Circle one)

If yes, Agency Decision is:

On file in:

_____ (Location) _____ (Phone)

Attached: _____ (Check if attached)

19. SUMMARY RATINGS:

QUALITY: _____ COST CONTROL: _____

TIMELINESS OF

PERFORMANCE: _____ BUSINESS RELATIONS: _____

20. CONTRACTING OFFICER (name):

SIGNATURE: _____ Date _____

Phone: _____ FAX: _____

Internet Address: _____

RATING GUIDELINES

	QUALITY OF PRODUCT OR SERVICE	COST CONTROL	TIMELINESS OF PERFORMANCE	BUSINESS RELATIONS
	<ul style="list-style-type: none"> - Compliance with contract requirements - Accuracy of reports - Effectiveness of personnel - Technical excellence 	<ul style="list-style-type: none"> - Record of forecasting and controlling target costs - Current, accurate and complete billings - Relationship of negotiated costs to actuals - Cost efficiencies 	<ul style="list-style-type: none"> - Met interim milestones - Reliability - Responsive to technical direction - Completed on time, including wrap-up and contract administration - Met delivery schedules - No liquidated damages assessed 	<ul style="list-style-type: none"> - Effective management, including subcontracts - Reasonable/cooperative behavior - Responsive to contract requirements - Notification of problems - Flexibility - Pro-active vs reactive
0-Unsatisfactory	Contractor is not in compliance and is jeopardizing achievement of contract objectives	Contractor is unable to manage costs effectively	Contractor delays are jeopardizing performance of contract objectives	Response to inquiries, technical/service/administrative issues is not effective
1-Poor	Major problems have been encountered	Contractor is having major difficulty in managing costs effectively	Contractor is having major difficulty meeting milestones and delivery schedules	Response to inquiries, technical/service/administrative issues is marginally effective
2-Fair	Some problems have been encountered	Contractor is having some problems in managing costs effectively	Contractor is having some problems meeting milestones and delivery schedule	Response to inquiries, technical/service/administrative issues is somewhat effective
3-Good	Minor inefficiencies/errors have been identified	Contractor is usually effective in managing costs	Contractor is usually effective in meeting milestones and delivery schedule	Response to inquiries, technical/service/administrative issues is usually effective
4-Excellent	Contractor is in compliance with contract requirements and/or delivers quality products/services	Contractor is effective in managing costs and submits current, accurate, and complete billings	Contractor is effective in meeting milestones and delivery schedule	Response to inquiries, technical/service/administrative issues is effective.
5 - Outstanding	The contractor has demonstrated an outstanding performance level in any of the above four categories that justifies adding a point to the score. It is expected that this rating will be used in those rare circumstances when contractor performance clearly exceeds the performance levels described as "Excellent."			

Block 1: Check the appropriate Block to indicate the type of report. The final evaluation of the contractor's performance will satisfy the reporting requirement stipulated in HHSAR 342.7002(c)(2)(iv).

Block 2: Indicate the period covered by the report.

Block 3: List the name of the contracting officer. Identify the contracting officer's Institute/Center or Office and the location of the contracting office.

Block 4: Identify the contract number of the contract being evaluated.

Block 5: List the name and address of the contractor. Identify the specific division or department being evaluated.

Block 6: Indicate the contract award date and contract expiration date.

Block 7: State the contract value.

Block 8: Provide a brief description of the work being performed under the contract.

Block 9: Using the rating guidelines set forth on page 5, assign each area a rating of 0 (unsatisfactory), 1 (poor), 2 (fair), 3 (good), 4 (excellent), or 5 (outstanding). Provide a brief narrative for each of the categories to support the rating assigned.

Block 10: Indicate whether subcontracts were involved. Briefly summarize the performance of any subcontractors that have major responsibilities under the contract or are required to perform a significant part of the contract requirement.

Block 11: List the name of the principal investigator and the names of other key personnel. Briefly describe the performance of the personnel listed.

Block 12: Circle the appropriate answer to indicate whether the contractor was successful in meeting the goals set forth in their subcontracting plan.

Block 13: Circle the appropriate answer to indicate whether the contractor met its small disadvantaged business participation goals?

Block 14: Circle the appropriate answer to indicate whether the contractor was committed to customer satisfaction. For the final report, indicate whether you would recommend selection of the firm again.

Block 15: The project officer signs in this Block.

Block 16: The contracting officer initials in this Block, indicating concurrence with the initial ratings and evaluation.

Block 17: Indicate whether the contractor submitted comments or a rebuttal. Attach a copy of the contractor's response to this report,

or indicate its location, if filed separately.

The contractor signs Block 17, indicating review of the evaluation.

Block 18: If the contracting officer and the contractor are unable to agree on a final rating, the matter is to be referred to an individual one level above the contracting officer. Attach a copy of the agency's decision to this report, or indicate its location, if filed separately.

Block 19: Record the ratings from Block 9.

Block 20: The contracting officer signs the report when all actions are completed. If changes were made to the ratings or the narrative during the rebuttal process, a copy of the report, as revised, shall be promptly furnished to the contractor.

Date

XYZ Company
12345 Washington Boulevard
Salt Lake City, Utah 02421

Attention:

Subject: Contract Number
Project Title

Dear

In accordance with FAR 42.1502, Federal agencies are required to prepare evaluations of contractor performance for each contract in excess of \$100,000. This letter transmits our (interim/final) evaluation of your organization's performance under the subject contract for the period _____ through _____.

You must sign and return the attached report to this office within thirty (30) days. You may submit, along with the signed report, comments, rebutting statements, and/or additional relevant information. Any disagreements regarding the report that cannot be resolved between you and the project officer or the contracting officer, will be referred to an individual one level above the contracting officer, whose decision on the matter will be final.

Please forward the signed report to:

Contracting Officer, NIH
9000 Rockville Pike, Building ____/Room
Mail Stop_____
Bethesda, Maryland 20892

Questions concerning this letter should be directed to the undersigned at
(301)_____.

Sincerely,

Mary White
Contracting Officer

Attachment